



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-124; C-570-125]

Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders – 60cc Up To 99cc Engines

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that vertical shaft engines with displacements between 60 cubic centimeters (cc) and up to 99cc produced in the People's Republic of China (China) and exported to the United States are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof, (small vertical engines) from China by means of being merchandise “altered in form or appearance in minor respects.”

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Benjamin A. Luberd, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2185.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2022, Commerce published the preliminary determination¹ for the circumvention inquiry of the AD and CVD *Orders* on small vertical engines from China with respect to vertical shaft engines with displacements between 60cc and up to 99cc produced in

¹ See *Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 87 FR 54672 (September 7, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

China and exported to the United States.² A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum.³ Commerce conducted this inquiry in accordance with section 781(c) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.225(i). This inquiry was initiated on September 13, 2021,⁴ and it is being conducted under the prior version of 19 CFR 351.225, not the version promulgated in *AB10*.⁵

Scope of the Orders

The merchandise subject to the *Orders* is small vertical engines from China. For a complete description of the scope of the *Orders*, see the Issues and Decision Memorandum.

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers vertical shaft engines with displacements between 60cc and up to 99cc produced in China and exported to the United States.

Analysis of Comments Received

All the issues raised in case and rebuttal briefs that were submitted by parties in this inquiry are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

² See *Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 86 FR 23675 (May 4, 2021) (*Orders*).

³ See Memorandum, "Final Issues and Decision Memorandum for Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: 60cc Up To 99cc Engines," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁴ See *Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping and Countervailing Duty Orders – 60cc Up to 99cc Engines*, 86 FR 51866 (September 17, 2021), and accompanying Issues and Decision Memorandum.

⁵ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*AB10*).

Final Determination

In the *Preliminary Determination*, we determined that vertical shaft engines with displacements between 60cc and up to 99cc and engines with displacements of 99cc up to 225cc are not dissimilar in terms of overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, channels of marketing, and the timing and circumstances under which the Zongshen Companies⁶ exported the engines with displacements between 60cc and up to 99cc. Thus, we preliminarily determined that the merchandise subject to this inquiry is not dissimilar to subject merchandise and that the engines at issue constitute merchandise “altered in form or appearance in minor respects” from in-scope merchandise, within the meaning of section 781(c) of the Act. We also preliminarily determined that the affirmative circumvention finding should be applied on a countrywide basis.⁷

Our final determination remains unchanged from the *Preliminary Determination*. Accordingly, we determine, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), that imports of vertical shaft engines with displacements between 60cc and up to 99cc, produced in China and exported to the United States, are circumventing the *Orders*. We also continue to find that the affirmative circumvention finding should be applied on a countrywide basis.

Liquidation of Entries

In the *Preliminary Determination*, Commerce stated that it would instruct United States Customs and Border Protection (CBP) to suspend liquidation of, and collect cash deposits on, vertical shaft engines between 60cc and up to 99cc produced in China and exported to the United States that were entered, or withdrawn from warehouse, for consumption on or after September

⁶ In the less-than-fair-value investigation, Commerce found that Chongqing Zongshen General Power Machine Co., Ltd.; Chongqing Dajiang Power Equipment Co., Ltd.; and Chongqing Zongshen Power Machinery Co., Ltd. (collectively, the Zongshen Companies) should be treated as a single entity. See *Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 85 FR 66932 (October 21, 2020), unchanged in *Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances in Part*, 86 FR 14077 (March 12, 2021). Absent information to the contrary, we continue to treat the Zongshen Companies as a single entity for the purposes of this inquiry.

⁷ See *Preliminary Determination PDM*.

17, 2021 (*i.e.*, the date of the initiation of this inquiry).⁸ On October 26, 2022, Commerce rescinded the administrative review of the AD order for the period July 23, 2020, through April 30, 2022, and the administrative review of the CVD order for the period May 26, 2020, through December 31, 2021.⁹ Accordingly, the administrative reviews covering certain entries of inquiry merchandise for which liquidation is suspended have been rescinded.

For any unliquidated entries and entries for which liquidation has not become final of vertical shaft engines with displacements between 60cc and up to 99cc produced in China and exported to the United States that entered as non-AD/CVD type entries (*e.g.*, type 01) that were shipped and/or entered, or withdrawn from warehouse, for consumption in the United States after September 17, 2021, importers should file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD/CVD case numbers to AD/CVD type entries (*e.g.*, type 01 to type 03). For such shipments, the Post Summary Corrections should be completed as soon as practicable, but not later than 45 days after publication of this notice in the *Federal Register*. Importers should report those AD/CVD type entries of merchandise under the AD/CVD case numbers of the *Orders* on small vertical engines from China (*i.e.*, A-570-124; C-570-125) or appropriate third-country case numbers (*i.e.*, A-201-996; C-201-997). The importer must pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties.

Commerce intends to instruct CBP to assess AD and/or CVD duties on all appropriate entries of vertical shaft engines with displacements between 60cc and up to 90cc during the periods of review noted above at rates equal to the applicable cash deposit of estimated AD or CVD duties in effect at time of entry, or withdrawal of merchandise from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions no earlier than 35 days after the publication of this notice in the *Federal*

⁸ See *Preliminary Determination*, 87 FR at 54673.

⁹ See *Rescission of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 64764 (October 26, 2022).

Register. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Continuation of Suspension of Liquidation

As a result of this determination, and consistent with 19 CFR 351.225(l)(3), we will instruct CBP to continue to suspend the liquidation of all entries of merchandise subject to the inquiry entered, or withdrawn from warehouse, for consumption, under the AD order after April 30, 2022, and all entries entered, or withdrawn from warehouse, for consumption, under the CVD order after December 31, 2021, and to require cash deposits of estimated AD and/or CVD duties at the applicable subject merchandise rates. The suspension of liquidation and cash deposit instructions will remain in effect until further notice.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to all parties subject to the administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

Notification to Interested Parties

This affirmative final determination of circumvention is issued and published in accordance with section 781(c) of the Act.

Dated: December 9, 2022.

Lisa W. Wang,
Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Merchandise Subject to the Circumvention Inquiry
- IV. Scope of the *Orders*
- V. Use of Facts Available with an Adverse Inference
- VI. Discussion of the Issues
 - Comment 1. Whether Commerce's *Preliminary Determination* Improperly Applied the Minor Alterations Provision of the Statute
 - Comment 2. Physical Characteristics of the Inquiry Merchandise
 - Comment 3. Modification Cost of the Inquiry Merchandise
- VII. Recommendation